



Council Communication

To: Mayor and Village Council

Through: Seth Lawless, Village Manager
Ty Harris, Director of Planning
Shelia Denoncourt, Building Official

From: Daniel Parobok, Environmental Coordinator- Village Biologist

Date: June 27, 2019

Subject: **2nd Reading** | Proposed Ordinance - Amending Chapter 30 Land Development Regulations to provide updated landscape standards and environmental regulations

Background:

At the January 14, 2019, Local Planning Agency meeting, Village staff introduced a discussion item of proposed amendments to *Chapter 30 Land Development Regulations* associated with revised and enhanced landscape standards and environmental regulations. During the conclusion of discussion of the proposed amendments the Village Planning and Development staff was directed to update the proposed amendments to reflect the suggestions and comments that were provided.

The LPA considered the proposed Ordinance at its March 11, 2019 meeting and recommended approval to the Village Council. The Village Council considered the proposed Ordinance at the March 14, 2019, regular Village Council meeting, and after discussion, passed the Ordinance on 1st reading by a 4-0 vote.

At the March 14, 2019, Village Council meeting, Village staff presented an ordinance amending *Chapter 30 Land Development Regulations* associated with revised and enhanced landscape standards and environmental regulations. After discussion, Village Council passed the Ordinance on 1st reading by a 4-0 vote.

At the April 25, 2019, Village Council meeting, Village staff presented an ordinance amending *Chapter 30 Land Development Regulations* to provide revised and enhanced landscape standards and environmental regulations. After discussion, the Village Council directed staff to separate the landscape standards and the environmental regulations and present only the environmental regulations to the Council for the 2nd reading vote. The Village Council further directed staff to divide the landscape standards into residential and non-residential categories and to present those standards to the Landscape Advisory Committee for discussion.

At the June 6, 2019, Landscape Advisory Committee meeting, Village Staff presented an ordinance amending *Chapter 30 Land Development Regulations* setting forth revised and enhanced landscape standards and environmental regulations, specifically the amendments relating to environmental and tree

protection. At the conclusion of the meeting, the Committee was in favor of all the proposed environmental and tree protection amendments within the ordinance and recommended approval.

Analysis:

The Village's Planning Department proposes the attached updates, additions, and amendments to the following Land Development Regulations. All proposed changes are contained within the strikethrough-underlined ordinance accompanying this memorandum.

- *Chapter 30 Land Development Regulations | Article IV Administrative Procedures | Division 2 Development Review Process*
- *Chapter 30 Land Development Regulations | Article V Schedule of District Use and Development Standards | Division 6 Landscape Standards*
- *Chapter 30 Land Development Regulations | Article VII Environmental Regulations | Division 3 Sea Turtle Nesting Protection*
- *Chapter 30 Land Development Regulations | Article VII Environmental Regulations | Division 4 Environmental Standards*

Recommendation:

For 2nd Reading, Village staff recommends that the Village Council approve and pass the proposed ordinance with the recommended amendments to *Chapter 30 Land Development Regulations* that both updates and enhances the Village's landscape standards and environmental regulations to reflect current environmental conditions.

ORDINANCE NO. _____

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE IV “ADMINISTRATIVE PROCEDURES”, ARTICLE V “SCHEDULE OF DISTRICT USE AND DEVELOPMENT STANDARDS”, ARTICLE VII “ENVIRONMENTAL REGULATIONS”; TO SPECIFICALLY AMEND AND ADD LANDSCAPE STANDARDS AND ENVIRONMENTAL REGULATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

WHEREAS, Islamorada, Village of Islands (the “Village”) has adopted a comprehensive set of Land Development Regulations (the “LDRs”) to implement the Village Comprehensive Plan; and

WHEREAS, the Village desires to amend Chapter 30 “Land Development Regulations” Article IV “Administrative Procedures”, Article V “Schedule of District Use and Development Standards”, and Article VII “Environmental Regulations”, and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development within the Florida Keys Area of Critical State Concern; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village Council”) finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the citizens of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true, correct and incorporated herein by this reference.

Section 2. Amending Land Development Regulations. Chapter 30 “Land Development Regulations” Article IV “Administrative Procedures”, Article V “Schedule of District Use and Development Standards”, and Article VII “Environmental Regulations” of the Code is hereby amended to read as follows:

Additional text is shown as underlined; deleted text is shown as ~~strikethrough~~

ARTICLE V. SCHEDULE OF DISTRICT USE AND DEVELOPMENT STANDARDS

DIVISION 6. LANDSCAPE STANDARDS

Sec. 30-812. Definitions.

~~Shade tree, for the purposes of this division, means a native canopy tree, usually with one vertical stem or main trunk which naturally develops a more or less distinct and elevated crown and provides at maturity a minimum shade crown of 30 feet in diameter. A list of shade trees shall be compiled by the planning and development services department.~~

Specimen tree means any tree with a diameter at breast height that is 75 percent of the record tree of the same species for the state or greater than or equal to 18 inches, whichever comes first.

Vehicular use area (VUA) means an area used for parking, loading and vehicular access for any property not occupied by a single-family residence.

Sec. 30-815 Bufferyard standards.

(f). Buffer areas utilizing public right of way shall meet the criteria set forth in section 30-819. The director may specify specific vegetation species and quantities to provide buffering as intended in this article.

Sec 30-818. Off-street parking landscaping.

All off-street parking areas containing more than six spaces and located in one of the zoning districts listed in this section shall be landscaped in accordance with the standards set out in this section. All off-street parking planting areas outlined in Table 30-818 are exclusive of bufferyard requirements. ~~required under~~ Landscaping required shall be installed in accordance with the standards set forth in this division and the Landscape Manual prepared by the director of planning and development services and referred to in section 30-826.

Sec. 30-821. Materials and installation criteria for required landscaping.

(i). All ~~shade~~ canopy trees installed within six feet of public infrastructure shall utilize a root barrier system, as approved by the village operations director.

Sec 30-823. Removal or pruning of vegetation.

(a). Removal ~~or major pruning~~ of any native ~~or naturalized~~ tree equal or greater than three and one-half ~~eight~~ inches in diameter at breast height, eight feet in overall height, or the removal of any vegetation in required open space areas, bufferyards, hammock, wetland, or beach berm habitat communities shall require a development permit. Removal of vegetation in the above habitat communities shall be subject to the provisions contained in article VII of this chapter.

(f). A native tree may be removed only when an applicant has demonstrated to the village that the proposed or existing developments, including residentially zoned properties, cannot be located on the site without the removal of the tree, and that there is no practical way to avoid tree removal. In determining if the applicant may remove trees pursuant to a tree removal development permit, the village shall consider at a minimum the following:

(1) The applicant has made every reasonable effort to incorporate existing trees and to minimize the number of trees removed;

(2) The trees proposed to be removed are the minimum number necessary; and the trees proposed to be removed are of poor quality and appearance, are damaging existing improvements, are creating ongoing safety problems for existing development, or are growing in too close proximity to other trees to permit normal growth and development of affected trees consistent with good forestry practices;

(3) The applicant must relocate the trees to be removed. If relocation is not a viable solution, an applicant shall replace removed trees. If it is determined that an applicant cannot relocate nor replace removed trees, the applicant shall pay the appropriate fee. If the applicant cites tree health, structure, or safety as the need for removal, the director of planning may require a written assessment from a Certified Arborist to support the determination.

Sec. 30-824. Designation of historic trees.

The director of planning and development services may recommend from time to time the designation of certain trees located within the village as ~~specimen~~ locally significant or historic trees. The village manager shall review such recommendation and add thereto his own comments and recommendations, and the matter shall be presented to the village council for its determination. The village council shall consider the report of the planning and development services department and the recommendation of the village manager and shall either accept, modify or deny the recommendation. The village council shall designate by resolution, pursuant to a public hearing in accordance with article IV, division 2 of this chapter, those trees it deems appropriate as historic trees.

ARTICLE VII. ENVIRONMENTAL REGULATIONS

DIVISION 2. DOCKS AND SHORELINE USES

Sec. 30-1582. Maintenance requirements.

(f). Protection from development activities. Any development activity occurring on a property containing mapped sea turtle nesting beach during the nesting season shall require a temporary exclusionary barrier. Barriers shall be:

(1) Constructed in such a manner to prevent turtles from traveling inland of the beach area and shall be placed at a maximum of five feet seaward of the limits of construction as allowed in this Article;

(2) Located in such a way as to allow the maximum extent of the beach accessible to potential nesting turtles;

(3) Constructed of durable materials that will not harm or injure a turtle if contact occurs, as approved by the village biologist; and

(4) Erected prior to the beginning of nesting season and remain in place until the end of nesting season or final inspection for a certificate of occupancy or completion has been issued.

Sec. 30-1614(d). *Clearing*. Clearing within tropical hardwood hammock shall be strictly limited to the development area required for the principal and accessory structures and uses. Clearing of hammock for parking or driveways exceeding the minimum requirements pursuant to this chapter, or for landscaping purposes shall not be permitted. Clearing of hammock for the

creation of swales shall not be permitted unless waived or limited by the director of planning and development services.

DIVISION 4. ENVIRONMENTAL STANDARDS

Sec. 30-1614 Open space requirements.

- (e). *Vegetation survey.* A vegetation survey containing the following information shall accompany all applications for development of structures or clearing, unless waived or limited by the director of planning and development services:
- (1) A list of the names of all vascular plants found on the parcel proposed for development;
 - (2) A vegetation map at a scale of at least 1:50, assigning a unique number to each tree indicating the location, area and size of all trees with a diameter at breast height of three and one-half inches or greater and any species listed as threatened, endangered or regionally important;
 - (3) A tree survey table with the following information listed by tree number corresponding to the numbered existing trees:
 - a. Common and scientific species name;
 - b. Diameter at breast height
 - c. Tree condition;
 - d. Proposed disposition (remain, relocate or remove);
 - e. Dollar value of specimen trees calculated in accordance with section 30-1615.
 - (33) The location of any specimen or champion trees; and
 - (54) A list of all invasive exotic vegetation and the area of infestation occurring on the site.

Sec. 30-1615. Transplantation and restoration standards.

(b) Each application for development approval shall include a transplantation or restoration plan containing the following:

- (4) Vegetation required to be restored or replaced shall meet the following replacement standards:

TABLE 30-1615. TREE REPLACEMENT TABLE

Canopy Spread of Tree (feet)	OR	Diameter of Trunk at 4 Feet Above Grade (inches)	Replacements Required
90 or greater		37 or more	8
60—89		32—36	7
50—59		27—31	6
40—49		22—26	5
30—39		17—21	4
20—29		12—16	3
10—19		7—11	2
5—9		2—6	1
Less than 5 feet*		Less than 2 inches	0

*Species listed as endangered, threatened or regionally important must be replaced at a minimum ratio of 1:1 of similar size and maturity.

- a. Replacement trees shall be at least eight feet in height, three inches dbh, and consist of non-invasive species pursuant to the standards contained in this division. The director of planning and development services may reduce the height requirement up to 50 percent for rare native plant species. The director of planning and development services may reduce the required quantity if replacement tree size is greater than eight feet in height and three inches dbh.
- b. All native palms and shrubs replaced shall be of the same size and species, or similar species, as the plants removed.
- c. Nursery stock of 24 inches in height may be substituted at the ratio of three plants for every one plant proposed for removal as may be approved by the director of planning and development services.
- d. Nursery stock shall be of the same species whenever possible, or equally rare species as approved by the director of planning and development services.

- e. Restoration sites within the range of the Schaus' Swallowtail Butterfly shall incorporate Torchwood (*Amyris elemifera*) into the restoration plan.
- f. All transplantation or restoration shall be on the development site unless there is no suitable planting area available.
- g. Transplantation and restoration plans shall be approved by the director of planning and development services prior to issuance of a permit and shall be attached as a condition on the permit.
- h. All transplantation and restoration shall be completed prior to issuance of a certificate of occupancy (C.O.) for the site, or, where a C.O. is not applicable, within the timeframe outlined in the transplantation plan.
- i. All transplantation and restoration shall meet a survival rate of 100 percent after two years. The village retains the right to access the property to inspect the survivorship rate through the two-year period. Any transplantation and restoration not meeting 100 percent survival during the two-year period shall be replaced.
- j. Off-site transplantation and restoration. Where the survivability of transplanted plants is low, as determined by the director of planning and development services, the applicant shall be required to donate nursery stock or pay into the village restoration fund. The restoration fund shall be maintained by the village and shall be for the specific purpose of land acquisition and restoration within the village.
- k. Donated nursery stock shall be identical in species composition to that which is lost due to development. In situations where replacement stock is not available, then a replacement schedule utilizing alternative species shall be approved in writing by the director of planning and development services. This alternative shall be utilized only after all possible sources of replacement species have been exhausted.
- l. Donated stock shall be donated at a ratio of 3:2 of that required in this section for on-site transplantation.
- m. Where payments are made in lieu of donations of stock, such payments shall be sufficient to purchase stock in numbers corresponding to the above replacement schedule. The applicant shall submit no less than three estimates from licensed nurseries and pay the average of the three estimates.
- n. Eligible receiver sites shall be approved by the director of planning and development services and shall be:
 - 1. Located within an area of publicly owned (local, federal, or state) land which is designated for the purpose of conservation, restoration and/or for open space; or
 - 2. Located within a site owned by a private nonprofit conservation organization where the site is designated for the sole purpose of conservation, restoration and/or for open space.
 - 3. Additionally, the off-site transplantation area shall be either:

- i. Suitable for restoration to the same habitat type as the applicant's property; or
 - ii. Suitable for establishing new habitat, provided that it can reasonably be expected to support the applicable habitat type based upon site history and characteristics and is approved by the director.
- o. Ineligible receiver sites for off-site transplantation are areas:
 - 1. Designated for landscaping that serve an architectural or aesthetic purpose only;
 - 2. Required landscape or buffer area by this chapter. An exception to these sites shall be made for scenic corridors;
 - 3. Which would require clearing of native trees or habitat to make room for plants; and
 - 4. Required for planting, restoration, or mitigation by this chapter or due to a code violation.
- p. Off-site transplantation methods:
 - 1. The transplantation or restoration plan shall be part of a written tri-party agreement or memorandum of understanding (MOU) between the applicant, the receiving site owner, and the village. The agreement or MOU shall be prepared by the applicant in a form acceptable to the village attorney and should state responsibilities and include a copy of the plan.
 - 2. The applicant shall pay the initial costs of restoration, in accordance with the terms of the agreement, to the owner of the receiver site including the cost of transport and delivery of the plants plus 25 percent of the cost of the plant material to cover labor, installation and maintenance for one year.
 - 3. All physical maintenance and guarantees required by the transplantation plan after installation and establishment of plants shall be the responsibility of the owner of the receiver site.
 - 4. As part of the guaranteed maintenance, the owner of the receiver site shall agree to keep it free of invasive exotic vegetation in perpetuity.
- q. If none of the above alternatives are available, then the applicant shall provide a fee equal to the cost of the replacement plants plus installation and maintenance, calculated in accordance with this section. This fee shall be held in an escrow account used by the village, willing government agency or conservation group to restore public lands so there is no net loss of tropical hardwood hammock within the village.

r. Specimen trees are subject to the preservation and transplantation criteria of this article. If it is determined by the village that tree transplantation is not feasible, then the applicant shall provide a fee as outlined below. The fee shall be based on the value of the tree(s), as determined by the village's specimen tree appraisal formula, as listed below, which reflects the village's tree preservation priorities based on size, health, and locations which enhance the ability of a tree to provide benefits to the greater community. An alternative

method of tree valuation may be used if a request is submitted to and approved by the village. Hazard, invasive, and dead trees are assigned a zero-dollar monetary value. The cost of tree replacement provided for by a specimen tree may be subtracted from the calculated specimen tree appraised value.

Specimen Tree Appraisal Formula:

Appraised Tree Value = Price of Replacement Tree × 2.7 × Size Factor × Health/Condition Factor × Location Score

Explanation of formula Components:

Replacement Tree Price shall be those set by the village's replacement tree price list (as amended) which is the average of three published prices of each tree species in the minimum replacement size.

2.7 is a multiplier utilized to represent installation and establishment cost.

Size factor:

Hardwoods/conifers: 1-24" DBH = 3, >24" DBH = 4

Palms: one foot (1') - twelve feet (12') clear trunk = 1, > twelve feet (12') clear trunk = 2

Health/conditions factor:

Excellent/good (no major defects) = 1.25

Fair (defects are correctable or are not anticipated to cause tree death or required removal within 10 years) = 0.75

Poor (defects not correctable, expected to cause death or require removal within 10 years) = 0

Location score: (locations not described below and all prominent ratings are designated by Planning Director)

Prominent: highly visible area for general public, significant contribution to area = 3

High: mapped tropical hardwood hammock and/or; front or street side yard or swale/within twenty feet (20') of roadway or sidewalk = 2

Medium: front yard/visible from road or sidewalk and greater than 20 feet from road or sidewalk = 1

Low: rear yard or otherwise similarly obstructed from view = 0.75

Sec. 30-1616. Environmental design criteria.

(e) *Saltmarsh and buttonwood associations.* All development on land classified as saltmarsh and buttonwood associations wetlands or disturbed with saltmarsh and buttonwood associations wetlands shall be designed, located and constructed such that:

- (1) All development in wetlands shall require approval or exemptions from the U.S. Army Corps of Engineers and state department of environmental protection;
- (2) No fill shall be placed on a parcel proposed for development except as may be permitted under division 5 of this article for the minimum amount necessary to permit a driveway, providing that the natural hydrologic regime of the site is not altered;
- (3) All development, except as permitted by this section or division 2 of this article, occurring adjacent to wetlands shall maintain a minimum vegetated setback of 50 feet to be maintained as an open space subject to the following:
 - a. If a 50-foot setback results in less than 2,000 square feet of principal structure footprint the setback may be reduced to allow for 2,000 square feet of principal structure footprint of reasonable configuration provided the setback is no less than 25 feet and the setback area is planted and maintained with a Class D bufferyard; or
 - b. On disturbed parcels, the wetland setback may be reduced to 25 feet, without regard to buildable area, if the entire setback area is planted and maintained with native vegetation double the density of a Class D landscape bufferyard utilizing suitable native vegetation for the habitat and thereafter placed under a conservation easement. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along manmade canals, channels or basins;
- (4) All listed threatened, endangered, commercially exploited, and regionally important native plant species shall be preserved, protected, relocated or replaced with the same species or equally rare species suitable to the site in accordance with section 30-1615;
- (5) All native trees greater than ~~six-inch~~ dbh shall be preserved, protected, relocated or replaced in accordance with section 30-1615; and
- (6) Lands classified as disturbed wetlands of moderate or low functional capacity may be filled for development if adequate mitigation is provided, as may be permitted pursuant to division 5 of this article.

(f) *Disturbed wetlands.* All development on land classified as disturbed wetlands shall be designed, located and constructed such that:

- (1) All development in wetlands shall require approval or exemptions from the U.S. Army Corps of Engineers and state department of environmental protection;
- (2) No fill shall be placed on a parcel proposed for development except as may be permitted under division 5 of this article for the minimum amount necessary to permit a driveway, providing that the natural hydrologic regime of the site is not altered;

- (3) All development, except as permitted by this section or division 2 of this article, occurring adjacent to wetlands shall maintain a minimum vegetated setback of 50 feet to be maintained as an open space subject to the following:
 - a. If a 50-foot setback results in less than 2,000 square feet of principal structure footprint the setback may be reduced to allow for 2,000 square feet of principal structure footprint of reasonable configuration provided the setback is no less than 25 feet and the setback area is planted and maintained with a Class D bufferyard; or
 - b. On disturbed parcels, the wetland setback may be reduced to 25 feet, without regard to buildable area, if the entire setback area is planted and maintained with native vegetation double the density of a Class D landscape bufferyard utilizing suitable native vegetation for the habitat and thereafter placed under a conservation easement. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along manmade canals, channels or basins;
- (4) All listed threatened, endangered, commercially exploited, and regionally important native plant species shall be preserved, protected, relocated or replaced with the same species or equally rare species suitable to the site in accordance with section 30-1615;
- (5) All non-invasive trees greater than $3 \frac{1}{2}$ ~~six-inch~~ dbh shall be preserved, protected, relocated or replaced in accordance with section 30-1615; and
- (6) Lands classified as disturbed wetlands of moderate or low functional capacity may be filled for development if adequate mitigation is provided, as may be permitted pursuant to division 5 of this article.

- (k). *Disturbed lands.* All structures developed, used or occupied on land which are classified as disturbed on the existing conditions map shall be designated, located and constructed such that:
 - (1) On lands classified as disturbed with tropical hardwood hammock:
 - a. All listed threatened, endangered, commercially exploited, and regionally important native plant species shall be preserved, protected, relocated or replaced with the same species or equally rare species suitable to the site in accordance with section 30-1615;
 - b. All specimen and champion trees shall be preserved in their natural condition;
 - c. All non-invasive or native trees greater than ~~six~~ $3 \frac{1}{2}$ dbh shall be preserved, protected, relocated or replaced in accordance with section 30-1615;
 - d. All areas of disturbance shall be managed to avoid the introduction and/or establishment of invasive exotic species; and
 - e. All invasive exotic species shall be removed from the parcel proposed for development.

Sec 30-1617. - *Environmental restoration standards and agreements.*

In the event any land clearing, grading, ~~or~~ filling, or vegetation removal occurs on a site on which the development is outside the scope of any permit issued or for which no permit was issued, then the building official shall issue a stop work order that shall remain in effect until all of the following restoration conditions have been met:

- (1) Removal of all fill and restoration of the site to its pre-violation grade.
- (2) A restoration plan is submitted pursuant to section 30-1615. The restoration plan shall include the following:
 - a. Replacement at a rate of 2:1 of the trees, shrubs, and ground covers on the unlawfully cleared site with native species as appropriate to the site cleared. The trees shall be of a size and maturity commensurate to the unlawful clearing as determined by director of planning and development services. The species diversity shall consist of the approximate percentages of the predominant tree, shrub and ground cover species on the site unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or ground cover species were unlawfully cleared, then those species shall be replaced with plants of a size and maturity commensurate to and related to the unlawful clearing regardless of predominance.
 - b. All replanted trees, shrubs, and ground covers shall be located on-site to the maximum extent possible. If not all the replacement plants can be physically replanted on-site, the remainder shall be donated to the village for restoration projects or to a government agency or a public or private conservation group to restore conservation lands. Alternatively, an amount of money equal to the rest of the replacement cost may be placed in an escrow account as provided in section 30-1615.
 - c. A stipulation that all invasive exotic plant species, as described in article V, division 6 of this chapter, shall be continuously removed for a two-year period from the completion of the restoration.
 - d. A stipulation that 100 percent of the trees replaced shall survive for a two-year period after the date of the last replanting. Dead or dying trees may be replaced during this period in order to assure the 100 percent minimum is met at the period end.
- (3) In lieu of completion of the restoration described in subsections (1) and (2) of this section, the building official may lift the stop work order if the following terms and conditions are met:
 - a. The permit holder shall enter into a binding restoration agreement mutually covenanting with the village that, in consideration for the lifting of the stop work order, the permit holder will restore the unlawfully cleared property in the manner described in subsections (1) and (2) of this section according to the schedule required by the building official.
 - b. In order to assure that the restoration agreement is carried out, a restoration guarantee shall be required. The restoration guarantee shall be the sum of the following amounts:

1. 100 percent of the estimated cost of the restoration as estimated by the director of planning and development services in cooperation with the building official; or
 2. 100 hundred percent of the price of a binding contract for the restoration work entered into with a contractor qualified to perform such work; or
 3. 100 hundred percent of the price of a binding contract for the restoration work described in subsection (2) of this section is entered into with a Florida licensed landscape architect.
- c. One of the following forms of restoration guarantee, in the amount described in subsection (3)b of this section, shall be submitted with the restoration agreement:
1. *Surety bond.* The bond shall be in a form and with a bonding company approved by the village attorney. The bond shall be payable to the village, on or beyond a date 12 months from the date of the restoration agreement. Release of any bond shall be conditioned upon final approval by the building official of the restoration work.
 2. *Cash escrow.* An escrow account may be established in the amount required with a federally insured financial institution (hereinafter "escrowee") in a form that meets the approval of the village attorney. The account shall be administered by the escrowee in accordance with an escrow agreement entered into between the village and the permit holder. The building official is hereby authorized to enter into such an agreement on behalf of the village. The agreement shall, at minimum, require:
 - i. The escrowee will pay to the village, or as the village directs, following the declaration of a default, such amounts as may be necessary to complete the restoration according to the terms of the restoration agreement. The sum held in the account may be reduced downward by the building official, but in no event shall the final ten percent be disbursed until the survivability rate and exotic maintenance requirements of subsections (2)c and d of this section have been met.
 - ii. The permit holder shall agree to release the escrowee from all payments made pursuant to an order of the building official after a default has been declared by the village council.
- d. In the event the building official determines that the permit holder has failed to perform the restoration work according to the terms of the restoration agreement or has failed to comply with the terms of the guarantees hereinabove set forth, the building official, in consultation with the village attorney, may take one or more of the following actions:
1. In the case of the cash escrow, the building official shall advise the permit holder, in writing, of the failure, giving the permit holder 30 days to cure the default. If the permit holder fails to cure the default, the building official may recommend to the village council that they declare the permit holder in default, and, upon written notification to the escrowee, some or all of the sums of money on deposit pursuant to the escrow agreement shall be disbursed by the

escrowee or issuer solely upon the authorization of the building official, and the escrowee or issuer shall be released by the permit holder as to such payment.

2. In the event of a surety bond, the building official shall inform the bonding company in writing of the default and request that it take the necessary actions to complete the required restoration.

(4). An after-the-fact permit shall be obtained for any unauthorized vegetation removal. Mitigation requirements for after-the-fact tree removal include paying double the typical required permit fee and providing double the required replacement for the removal of canopy. The director of planning and development services and/or the village biologist may dictate the location of replacement trees for any unauthorized removal.

(5). If the natural habit of growth of a tree is damaged or destroyed, the property owner shall install replacement trees as provided in section 30-1615 or conduct remedial maintenance actions to restore the health of the tree, if restoration is feasible within a two-year period. If remedial maintenance is conducted, the village may require a restoration plan and a bond for the tree replacement and specimen tree value of the tree (calculated prior to abuse). The village will release the bond after the property owner demonstrates restoration of the tree in accordance with the village-approved plan. If restoration of the tree has not been achieved by the end of the two (2) year period, the village will collect on the bond. An abused tree, including one that is undergoing/has undergone restoration, may be required by the village to be removed if it threatens public safety or property, and a development permit for tree removal may be required.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Repeal of Conflicting Provisions. The provisions of the Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Inclusion in the Code. It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become a part of the Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Transmittal to the Florida Department of Economic Opportunity. The provisions of this Ordinance constitute a “land development regulation” as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the Florida Department of Economic Opportunity (“DEO”) for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. Effective Date. This Ordinance shall not be effective until approved pursuant to a final order by DEO, pursuant to Chapter 380.05, Florida Statutes; or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

The foregoing Ordinance was offered by Vice Mayor Mike Forster, who moved for its adoption on first reading. This motion was seconded by Councilman Jim Mooney, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	YES
Councilwoman Cheryl Meads	ABSENT
Councilman Jim Mooney	YES

PASSED on the first reading this 14th day of March, 2019.

The foregoing Ordinance was offered by _____, who moved for its adoption on second reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Deb Gillis _____
Vice Mayor Mike Forster _____
Councilman Ken Davis _____
Councilwoman Cheryl Meads _____
Councilman Jim Mooney _____

PASSED AND ADOPTED on the second reading this ___ day of _____, 2019.

DEB GILLIS, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY